

THE USE OF MOTIONS AND DEMURRERS IN CONNECTICUT PRACTICE.

[The following memorandum of decision filed some months since by Hon. Samuel O. Prentice, Judge of the Connecticut Superior Court, in a case pending before that Court in Hartford County has recently been called to our attention. The subject with which it deals is such an important one that we have obtained a copy for publication. It is sufficient for its clear understanding to know that it was called forth by a motion to erase one of the defenses of the answer for the reason that the defense did not contain a good and sufficient answer to the complaint.—EDITORS.]

THE AMERICAN PAPER GOODS CO. } *Superior Court.*
 v. } *Hartford County.*
 A. F. WOODING, *et al.*

MEMORANDUM UPON MOTION TO ERASE SECOND DEFENSE OF ANSWER.

A demurrer is the proper pleading to secure the object sought by this motion. It is not the province of a motion to try the sufficiency of a pleading in matter of substance. Under general code rules the conditions are rare where a motion to erase the whole of a pleading, that is, the whole of a statement of a cause of action or ground of defense, is an appropriate remedy. Such conditions, however, there are, as for instance:

1. Where there was no right to file the pleading.
2. Where the pleading is so defective in form or improper in matter or substance that it ought not to be placed on file.
3. Where the pleading contains such indecent, indecorous or scandalous matter that it ought not to become a part of the record.

4. Where the pleading is a sham or frivolous one.

Where a pleading is a mere pretense—one good in form but false in fact, and not pleaded in good faith, its character being clearly apparent upon mere inspection—it is a sham plea, and may be stricken out on motion.

Where a pleading is on bare inspection and without argument or consideration so clearly and palpably bad, imperfect,

irrelevant or evasive as to indicate bad faith in the pleader, it is frivolous, and may in like manner be stricken out.

Beyond this I take it general code rules have not gone in permitting the striking out upon motion of whole counts or defenses. The sufficiency in matter of substance of any pleading is not allowed to be thus tried. Demurrers are alone the appropriate means to that end. (Phillips Code Pleadings, Sections 278, 279.)

The Connecticut rule upon this subject, III., section 9, provides that the Court may order any pleading stricken out which discloses no reasonable ground of action or defense. At first sight this rule appears to give to motions to strike out a more comprehensive scope than is ordinarily given to them. I am of the opinion, however, that it should receive, as it easily may, such a construction that it will in its operation harmonize with the general code rules which I have stated, and which I regard as furnishing an intelligent, consistent and common sense mode of procedure. It should not be interpreted as authorizing an usurpation in a large but indefinite line of cases of the office of demurrers by motions. To justify the employment of a motion to erase, the absence of "reasonable ground" should be so obvious that upon mere inspection and without consideration or argument it would be manifest to any reasonable mind, and therefore so obvious as to impute bad faith to the pleader. Any pleading properly filed which does not thus bear upon its face the marks of bad faith, either actual or constructive, is entitled to be tested for its sufficiency upon demurrer.

By reason of the unfortunate or uncertain phraseology of two of our rules—the one already referred to, and IV., Section 10, there has arisen some confusion in practice in the use of motions and demurrers. I understand the true rule to be as follows:

1. Where it is sought to attack a part only of any pleading, that is, of any statement of a cause of action or ground of defense, for any cause, it should be done by motion, and not by demurrer.

2. Where any pleading is as a whole claimed to be sham, or frivolous, or improperly filed, or unfit by reason of its indecent or scandalous allegations to become a part of the record, or so defective in form or improper in matter or substance that it ought not to remain as a part of the file, a motion to strike it out is the proper proceeding.

3. Where it is sought to attack the whole of any pleading for its insufficiency in matter of law, save under the exceptional

circumstances hereinbefore indicated, it should be done by demurrer.

In interpreting and applying Rule 2 defects of form and substance should be construed to embrace uncertainty, obscurity, impertinence, prolixity and unnecessary repetition when characteristic of an entire pleading. Section 882 of the General Statutes has expressly made these faults grounds for motions to expunge pleadings. By our Supreme Court departure has been held to be a defect of like character. *Logiodice v. Gannon*, 60 Ct. 81.

The pleading to which this motion is addressed was filed in rightful order, is proper in form, unobjectionable in matter, and not of the kind which the law denominates as either sham or frivolous. It is one from which no implication of bad faith on the part of the pleader can arise. It may be insufficient, but it is nothing worse. The claim is made that it is insufficient and palpably so. Granting this, it does not follow, and cannot be fairly said, that it partakes of the qualities of a sham or frivolous defense, or that its insufficiencies are so obvious as to make it a defense in bad faith. Its insufficiencies must therefore be reached by demurrer alone.

The motion is therefore denied.

Prentice, J.